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No. 632

In the Supreme Court of the United States

VERNON R. MORGAN and ROBERT C. YOUNG,

Appellants,

vs.

BOARD OF FORESTRY OF THE STATE OF OREGON and POLK COUNTY, a municipal corporation,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF OREGON

MOTION TO DISMISS, OR, IN THE ALTERNATIVE AFFIRM LOWER COURT

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MOTION TO DISMISS

Appellees move the Court for an order dismissing the appeal herein.

This motion is made upon the ground and for the reasons:

(1) That the appeal does not present a substantial Federal question.

(2) The appeal is from the construction of a State statute in which the Oregon Supreme Court fully considered the matter of violation of the United States Constitution.

ALTERNATE MOTION TO AFFIRM

Appellees move the Court for an order affirming the decision of the Supreme Court of the State of Oregon.

This motion is made upon the ground and for the reason that the questions alleged herein have been plainly foreclosed by prior decisions of this Court so as to make further argument unnecessary.

STATEMENT OF FACTS

In 1941, Polk County commenced a suit to foreclose delinquent taxes. Pursuant to Statute, the notice given was published and not only did it describe the property, but it also gave the name of the record property owner at the time of the delinquency, pursuant to Oregon law.

Some 24 years later, appellants commenced the proceeding in the Circuit Court of the State of Oregon for pur-

poses of quieting title to their alleged property. At the time of the institution of suit in the Oregon Court by appellants, ORS 312.230 in toto had previously been adopted by the Legislature of the State of Oregon and was in full force and effect. Comparison of that statute with the similar statute in New York shows that the Oregon statute was taken from the New York statute almost word for word and that the New York statute and its constitutionality has previously been submitted and upheld by the United States Supreme Court.

THE FEDERAL QUESTION IS NOT SUBSTANTIAL

This appeal presents the question as to whether notice in a tax foreclosure proceeding may be given by publication of notice in a newspaper in the county in which the property is located, and whether the statute of limitations limiting the right of a property owner to set aside such tax foreclosure sale, is constitutional.

The cases cited by appellants do not involve tax foreclosure, but involve published notice in other types of cases.

The question at this time is not substantial because it has been previously decided by this Court in the cases of *Turner vs. People of the State of New York*, 168 US 91 (1897), and *Saranac Land and Timber Co. vs. James A. Roberts*, 177 US 318 (1900). These cases have not been overruled by this Court and have been relied upon by the Oregon Legislature in its enactment of ORS 312.230.

ARGUMENT ON ALTERNATE MOTION

As a part of the argument under this motion, we restate the statement of facts submitted. Based upon those facts, we submit that the decision by the United States Supreme Court in the case of Turner vs. People of the State of New York, 168 US 91 (1897) and Saranac Land and Timber Co. vs. James A. Roberts, 177 US 318 (1900) show that the question presented herein has been plainly foreclosed by prior decisions of this Court, and no further argument is necessary on the case of Missouri Pacific Railroad Company vs. Castle, 224 US 541 (1912).

CONCLUSION

It is submitted that the question submitted in appellant's jurisdictional statement and appeal does not submit a substantial Federal question and that the appeal should be dismissed or, in the alternative, because the question presented has been plainly foreclosed by prior decisions of this Court, the Supreme Court of the State of Oregon should be affirmed.

Respectfully submitted,
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